

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2762 OF 2006

Prashant Madhukar Gadewar, .. Petitioner.

Vs

1.Shashikant Vyankatesh Bejagamwar
and ors. .. Respondents.

WITH

WRIT PETITION NO.2761 OF 2006

Maloji Madhukar Gadewar, .. Petitioner.

Vs

1.Shashikant Vyankatesh Bejagamwar
and ors. .. Respondents.

Mr R.S.Apte with Mr Ashutosh Gole, for the petitioner.
Mr Madhav Jamdar, for the respondent no.1

CORAM : D.B.BHOSALE, J.
DATE : 29.08.2006

PC:

1. Heard the learned counsel for the parties.
2. The petitioner has impugned the order dated 18.3.2006 passed by 10th Adhoc Addl.District Judge, Pune on the application at Exhibit-3 in Civil Appeal No.188 of 2006. By that order, the said application filed by the petitioner for stay to the execution of the decree dated 28.4.1982 has been rejected. The instant proceedings arise from Spl. Darkhast No.111 of 2005 filed by the respondent-decree holder. In the said

Darkhast the present petitioner filed Misc. Application No.505 of 2005 under Order 21 rule 97 of the Code of Civil Procedure seeking declaration that the respondent-decree holder is not entitled for possession of the suit property on the basis of the decree dated 28.4.1982 passed in Regular Civil Suit no.6 of 1977. After the said application was rejected vide order dated 3.3.2006 the petitioner filed civil appeal no.189 of 2006 and in that he filed the application at Exhibit-3 for interim relief and since that application was rejected the petitioner has filed the instant writ petition challenging the said order.

3. This petition has a checkered history. The respondent-decree holder had filed R.C.Suit No.6 of 1977 against the defendants consisting of the father of the present petitioner, who was defendant no.3 in the said suit. The suit was for possession on the basis of the title. It was decreed on 28.4.1982. The matter was thereafter carried further by the father of the petitioner (defendant no.3) right upto the Supreme Court and he lost in all the courts. The Supreme Court dismissed the S.L.P on 5.12.1984. On 10.12.1984 the wife of defendant no.3, i.e. mother of the present petitioner, filed an independent suit no.151 of 1984, claiming right in the suit property as tenant. The said suit was also dismissed on 28.7.1988. The appeal also

came to be dismissed some time in 1989. It appears that at the same time, Chandrakant Udhav, brother of original defendant no.3 i.e. uncle of the present petitioner, also had filed civil suit no.52 of 1985 claiming share in the suit property. That suit and the appeal carried thereafter, also came to be dismissed. Thereafter, Chandrabhagabai, i.e. mother of original defendant no.3 i.e. grand mother of the present petitioner, filed special civil suit no.184 of 1989 seeking partition of the suit property. She also failed in obtaining any order in her favour. However, it is very pertinent to note that during pendency of those proceedings when the matter was before this court in civil revision application, Chandrabhaga died and the present petitioner was brought on record as her heir and legal representative. What happened to those proceedings thereafter is not on record. The petitioner also on 17.2.1989, filed independent Regular Civil Suit No.369 of 1989 seeking declaration that he also got share in the suit property. Exhibit-5 application seeking interim order filed therein was dismissed and ultimately the suit also came to be dismissed on 19.1.1994. On 22.7.2005 the petitioner, and his brother Maloji filed independent applications bearing application nos 504/05 and 505/05 under Order 21 rule 97 of the Code seeking declaration that the decree holder is not entitled for

possession of the suit property on the basis of the decree dated 28.4.1992. Their applications were rejected by the separate orders dated 3.3.2006 and hence both filed independent appeals bearing nos 188 and 189/06. It is against this backdrop I heard the learned counsel for the parties.

4. Mr Apte, learned counsel for the petitioner, at the outset, submitted that after having admitted the appeal against the order dated 3.3.2006 the appeal court ought to have granted stay to the execution of the decree, otherwise, the appeal itself would become infructuous. He placed reliance upon the judgments of the Supreme Court in *Brahmdeo Choudahry Vs. Rishikesh Prasad Jaiswal and anr*, AIR 1997 Supreme Court 856 and in *N.S.S.Narayana Sarma Vs. M/s Goldstone Exports (P) Ltd*, AIR 2002 Supreme Court 251 to contend that a stranger can get his claim adjudicated prior to losing possession to the decree holder. He further submitted that the petitioner, who claims an independent right, title and interest in the property, has every right to resist execution of the decree before getting actually dispossessed.

5. It is true that the resistor or obstructor can raise questions which legally arise between him and the decree holder or that he has independent title to the property. However, Mr Apte could neither state as to

what questions raised by the petitioner-obstructionist legally arise between him and the decree holder nor could he state as to how the petitioner has independent title to the property. The petitioner is claiming right only through his father who lost in the suit right upto the Supreme Court. It is clear from chronology of the events that the petitioner's family did their best to prolong the execution for 23 years from the date of decree by filing proceedings one after another, only with a view to defeat the fruits of the decree. He has failed to establish as to what right has he got in the suit property. The judgments relied upon by Mr Apte would not help the petitioner in view of the peculiar facts and circumstances of the case. No indulgence can be shown to such litigants who litigate only to defeat the rights of others or to deprive decree holder to enjoy the fruits of the decree. In the circumstances, I see no reason to interfere with the impugned order. The writ petition is accordingly dismissed.

6. For the self-same reasons, the writ petition filed by the petitioner- Maloji bearing no.2761 of 2006 also stands dismissed.

(D.B.BHOSALE, J.)